

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF INDIANA
3 HAMMOND DIVISION
4 United States of America,
5 Plaintiff,
6 vs. 2:04-CR-80
7
8 Charles Tanner,
9 Defendant.

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12

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14 APRIL 3, 2008

15 TRANSCRIPT OF SENTENCING HEARING

16 BEFORE THE HONORABLE RUDY LOZANO

17 UNITED STATES DISTRICT JUDGE

18

19

20 Court Reporter: Richard D. Ehrlich, RMR, CRR
21 Official Court Reporter
22 United States District Court
23 5400 Federal Plaza, Suite 4082
Hammond, IN 46320
(219) 852-6557

24 Proceedings reported by stenotype. Transcript produced by
25 Computer-aided transcription.

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1 A P P E A R A N C E S:

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FOR THE GOVERNMENT:

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The defendant, Charles Tanner, present in person.

Page 3

1 THE COURT: This is the case of The United States of
2 America v. Charles Tanner. Hammond Criminal Number 2:04-CR-80.
3 The defendant is present, in person, and with his
4 attorney, Ms. Andrea Gambino.
5 The Government is represented by its Assistant United
6 States Attorney, Mr. David Nozick and Ms. Jackie Jacobs.
7 The Court's probation office is represented by its
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8 probation officer, Ms. Belinda Paige.

9 Counsel, we are here today for a sentencing. Before
10 starting the sentencing, I want to make a record of what has
11 transpired in the last few hours. About 1:00 I received a fax
12 with a sentencing memorandum filed by the defendant. That
13 memorandum is 15 pages in length. It contains numerous
14 citations to the transcript as well as citations of law as well
15 as issues that I have preliminarily found to be non-existent as
16 the original objections in this case.

17 I have continued this matter numerous times at the
18 defendant's request. In fact, the last time this Court was
19 frustrated because I want to see that the defendant have this
20 case move along; that I called the defendant up here in open
21 court to ask him whether or not he was happy and whether he was
22 agreeable to a continuance. At no time did I ever receive, to
23 the best of my knowledge, a motion asking to expand on the
24 issues. The only thing that I can have from recollection that
25 the defendant talked about filing was a memorandum on 3553(a)

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1 issues on sentencing. The memorandum that I received today
2 talks about whether he should get acceptance of responsibility,
3 which was not an issue on the original presentence report from
4 the probation department. It talks about whether there is a
5 conspiracy or is not a conspiracy and several other matters
6 which I have not really even had an opportunity to go through
7 in any detail.

8 I find that it's very unfair to this Court at the 11th
9 hour to drop a memorandum on the Court and expect the Court to
10 be able to digest it and review the citations and the
11 transcript pages and go through the record.

12 I was also promised by counsel the last time that there
13 would be no more requests for continuances, and that this Court
14 would have no further problems with counsel in this matter.

15 I believe, and I haven't had an opportunity to go back
16 through the transcript, that at the time the jury verdict came
17 in, I ordered the attorneys to meet with probation and set out
18 all of their objections, and I wanted it done on a timely
19 basis.

20 I advised counsel that failure to do this would either be
21 a waiver and would also possibly subject him to sanctions.

22 I received a presentence report in this case. It appears
23 to be August 14th of the year 2007, and the date report was
24 revised was August 7th. I do believe it was August 14th,
25 and where the objections that are noted, the probation officer,

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1 I believe, wrote, As the Court is aware, this case has been
2 continued for several months due to the defendant changing his
3 attorney after his conviction. As such, many months have been
4 utilized by the defendant to prepare the following objections.
5 These objections are firm. They identify three areas: Drug
6 quantity, drug gun enhancement, and role.

7 Subsequent to that I went through the objections and I
8 went through the transcript, and I prepared a dialogue with
9 regards to all of the objections in this matter. I will also
10 note that the conviction in this case was on November 6th of
11 the year 2006. This Court has not found good reason why this
12 delay, exorbitant delay, was necessary. This Court has not
13 found, at least right now, any reason where there has been a
14 request to expand the issues, and I can't help but believe that
15 if this case were before the Seventh Circuit Court of Appeals,
16 they would not stand for attorneys coming in at the 11th hour

17 and changing the issues of appeal. I don't think that this
18 Court should be dealt any less respectfully, and I do not find
19 it to be respectful at this point; and to say the least, I am
20 very disappointed.

21 I am reserving the right to have a hearing on this matter
22 later as to why sanctions should not be given in this case.
23 This Court has spent numerous hours preparing for every one of
24 the sentencing hearings only to be found at the last minute
25 that it is continued. That is a waste of judicial resources,

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1 and, again, it's also disrespectful to the Court.

2 I intend to go forward with today's sentencing on the
3 issues as they are set out in the probation report. Do I make
4 myself understood?

5 MR. NOZICK: Yes, Your Honor.

6 MS. GAMBINO: Yes, Your Honor.

7 THE COURT: I had my court reporter do a transcript
8 of the last hearing that I had with Mr. Tanner up here when I
9 was asking him about whether he had any objection to the
10 continuance. There was not even a hint during that hearing
11 that the issues were going to be changed or that they wanted to
12 expand on them.

13 Mr. Tanner, on the 6th day of November 2006, the jury
14 returned a verdict finding you guilty of Counts Two and Three
15 of the superceding indictment, and this Court adjudged you
16 guilty of those offenses.

17 On the 14th day of August of the year 2007, I received a
18 written presentence report together with an addendum setting
19 forth any objections counsel have made that have to be resolved
20 together with the probation officer's comments therein from the

21 probation office, and I have studied that report and the
22 addendum.

23 Counsel, I will also add to the comments that I made for
24 the record earlier that counsel was 20 minutes late before
25 arriving here for this sentencing hearing today.

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1 Counsel, to the best of my knowledge, I have not received
2 any letters from relatives, friends, or coworkers. Do you know
3 of any?

4 MS. GAMBINO: At this time, no, Your Honor.

5 THE COURT: Pardon?

6 MS. GAMBINO: No.

7 THE COURT: Mr. Nozick?

8 MR. NOZICK: No, Your Honor.

9 THE COURT: Ms. Gambino, did both you and your client
10 receive and review a copy of the presentence investigation
11 report and the addendum setting forth any objections counsel
12 have made that have to be resolved at this hearing before the
13 sentencing hearing?

14 MS. GAMBINO: Your Honor, before I respond to your
15 question, I think that it's my duty to say two things: First
16 of all, I take full responsibility for not being prepared as I
17 have explained to you on the last time that we met. I have had
18 some personal, mental, and physical health issues that I've
19 been dealing with, and so I have been behind in my work.

20 Now, I don't want to risk Mr. Tanner suffering because of
21 my inability to comply with your orders. So I would move to
22 either withdraw and to go through with whatever sanction
23 hearing that you need to have to allow Mr. Tanner the
24 opportunity to have his sentencing that he deserves. He is
25 facing a life sentence, and I am not completed with the work

1 that I need to do on his behalf. I do not want to see him go
2 into sentencing unprepared.

3 THE COURT: Are you telling me, Ms. Gambino, that
4 you're still not prepared for today's hearing?

5 MS. GAMBINO: Your Honor, I would go forward with the
6 hearing if you ordered me to do so, but I want Mr. Tanner to
7 have the best opportunity that he can have.

8 THE COURT: Ms. Gambino, don't you believe that two
9 years is being more than fair with the defendant?

10 MS. GAMBINO: Your Honor, there have been a number of
11 reasons for that delay, some of them, indeed most of them, have
12 been my request because I have not had all of the transcripts
13 because it's taken me a long time to get through the
14 transcripts. I did not try the case, and I was not privy to
15 any of the pretrial or anything like that.

16 THE COURT: Ms. Gambino, you have been a practicing
17 lawyer for how long?

18 MS. GAMBINO: For 14 years, Your Honor.

19 THE COURT: And you realize you have ethical
20 obligations to the Court?

21 MS. GAMBINO: Yes, I do.

22 THE COURT: If you are not able to prepare for a
23 case, don't you have an obligation to advise the Court with
24 sufficient time?

25 MS. GAMBINO: Yes, I do, Your Honor.

1 THE COURT: And when you tell the Court that I need
2 one more continuance, and there will be no question that I'll

3 be ready the very next time, don't you think this Court can
4 rely on it?

5 MS. GAMBINO: Yes, Your Honor.

6 THE COURT: And don't you believe, Ms. Gambino, that
7 a defendant has a right to an attorney of his choice?

8 MS. GAMBINO: Yes, he does.

9 THE COURT: And if he's advised of some of the delays
10 that occur, that he can do that if he so desires to continue
11 with that attorney?

12 MS. GAMBINO: That's correct, Your Honor.

13 THE COURT: Didn't I advise the defendant at the last
14 hearing, and I don't have the date on that. Hold on a minute.
15 I can probably give it to you.

16 No, I don't have it front of me right now.

17 THE CLERK: February 14th, Your Honor.

18 THE COURT: February 14th, regarding your
19 requesting a continuance, regarding whether he was satisfied
20 with your services in this case?

21 MS. GAMBINO: Yes, Your Honor.

22 THE COURT: Counsel, otherwise can't this case go on
23 to infinity by your continuing to come in and say, I'm not
24 prepared? I can't be ready, or by him saying I want a
25 different lawyer?

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1 MS. GAMBINO: No, Your Honor. It doesn't go on to
2 infinity.

3 THE COURT: Well, conviction is in 2006. Pretty soon
4 it'll be able to claim Social Security. Don't you think that
5 that's a long time between the date of conviction and
6 sentencing?

7 MS. GAMBINO: It is a long time, Your Honor. I
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8 acknowledge that. It was a large case, and also it's a lot of
9 time that he's facing. The Government is asking this Court,
10 and the probation officer has recommended, that you send this
11 man to prison for the rest of his life. And he has no prior
12 convictions. And I have been diligently going through this
13 record to make sure I can get absolutely everything I can out
14 of it.

15 THE COURT: Ms. Gambino, you knew that it was a case,
16 because of the quantities that the jury found, I'm not saying
17 you agree with them, that he could be facing life imprisonment?

18 MS. GAMBINO: Yes, sir.

19 THE COURT: And you knew the responsibility that you
20 had with a case of this magnitude?

21 MS. GAMBINO: Yes. And I've been doing the best that
22 I can under the circumstances of my life and my practice.

23 THE COURT: Don't you have an obligation to the Court
24 and to your client then to ask to withdraw?

25 MS. GAMBINO: I do, and I am doing that.

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1 THE COURT: On the day of sentencing after this Court
2 has advised you that it is not going to expand the issues in
3 this case.

4 MS. GAMBINO: Your Honor, I was not aware that you
5 could not bring up new issues after you had gone through and
6 gotten new information.

7 At the time that I prepared --

8 THE COURT: Is that what you do in Chicago, Ms.
9 Gambino? Do you go in to argue a case, and then if you decide
10 there's new issues all of a sudden bring them up?

11 MS. GAMBINO: Your Honor, it's my duty to bring up

12 issues as I find them, and I did not have at my access the full
13 transcript at the time I did these objections.

14 THE COURT: How long have you had the transcript?

15 MS. GAMBINO: I've had the full transcript since the
16 beginning of the year.

17 THE COURT: Don't you believe that three months,
18 maybe even four, is more than enough time to read that
19 transcript? I mean, I wasn't very fast, Ms. Gambino, when I
20 practiced law, but I wasn't that slow.

21 MS. GAMBINO: Your Honor, ordinarily I agree with you
22 that that is sufficient time, but it has not been sufficient
23 time for me, and I have now accomplished that and filed this
24 memorandum and would like to be able to put on character
25 witnesses for Mr. Tanner.

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1 THE COURT: I have no problem with you putting on
2 character witnesses. That's fine. Are they here?

3 MS. GAMBINO: But I do not --

4 THE COURT: Are they here?

5 MS. GAMBINO: I do not think that it's fair --

6 THE COURT: Are your character witnesses here, Ms.
7 Gambino?

8 MS. GAMBINO: Not all of the witness that Mr. Tanner
9 would like to have, no.

10 THE COURT: Again, Ms. Gambino, don't you have an
11 obligation to be ready for Court hearings?

12 If you go up to Chicago at the Court of Appeals, and you
13 decide halfway through argument that you have other issues or
14 that you want additional evidence brought in on the transcript,
15 do you tell the Court of Appeals, I want to change the rules
16 under which we're operating?

17 MS. GAMBINO: No, Your Honor.

18 THE COURT: I have a very difficult time, Ms.

19 Gambino, understanding how you handled this case.

20 MS. GAMBINO: I appreciate that, Your Honor. I have
21 had a difficult time with it myself.

22 THE COURT: And I think that I have been more than
23 fair continuing this matter over and over again and receiving
24 promises from you that, you know, this was the last time.

25 MS. GAMBINO: I understand that, Your Honor, and I'm

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1 fully prepared to take the consequences of that myself. I'm
2 just asking that you not visit them upon Mr. Tanner by
3 proceeding forward at this time.

4 THE COURT: Ms. Gambino, doesn't he have a
5 responsibility when he picks his attorney to be responsible for
6 the actions taken provided by that attorney?

7 MS. GAMBINO: Your Honor, he can't be responsible
8 for -- no, I think he cannot be responsible for everything that
9 I am responsible for.

10 THE COURT: Mr. Nozick, what's the Government's
11 position?

12 MR. NOZICK: One moment, Your Honor.

13 Your Honor, we are ready to proceed with the sentencing.
14 I will defer to the Court. If you're ready to sentence him and
15 deny her motion to continue it, then we are ready to proceed;
16 if you are going to allow her to withdraw from the case, we'll
17 be ready at the date you give us.

18 THE COURT: I have a very difficult time, Ms.
19 Gambino. I don't understand why this Court should be put on
20 over and over again.

21 I need one more continuance this last time.

22 And I hear the same story over and over again. If you
23 were a new attorney, I would be more understanding, but I think
24 you, yourself, had said you practiced for 14 years, and you've
25 done substantial criminal cases before. You knew that this

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1 case was a case that had been tried and lost, and you knew what
2 he was facing, and I think you know your obligations ethically
3 to this Court.

4 MS. GAMBINO: Yes, Your Honor, and I'm doing the best
5 that I can to meet them, and I know that that has not been
6 satisfactory.

7 THE COURT: I may be faced with a 2255, but somehow
8 I've got to send a message to you and to attorneys they can't
9 do this. It's not proper.

10 MS. GAMBINO: I have that message loud and clear,
11 Your Honor.

12 THE COURT: Well, that's what you told me the last
13 time and the time before that and the time before that and the
14 time before that.

15 MS. GAMBINO: Your Honor, you have my memorandum. I
16 am only asking you that you not take your disappointment and
17 your distress with me into consideration when you're dealing
18 with Mr. Tanner. It's not his responsibility, and I am fully
19 prepared to accept mine.

20 THE COURT: When he chooses an attorney, doesn't he
21 agree to that attorney?

22 MS. GAMBINO: Yes, but he did not agree to the
23 circumstances of my life, and he shouldn't have to suffer for
24 them.

25 THE COURT: Well, I'll tell you what, Ms. Gambino.

1 I'm not going to let you get this memorandum in because you
2 haven't convinced me of that, but I'll let you give me a
3 memorandum with regards to why he should not be bound by your
4 actions and why that is not a sanctionable event towards you
5 because I am not convinced that he's not responsible.

6 He had another attorney. He discharged him. That's his
7 right. And he hired a new attorney. And there have been
8 numerous continuances. And I even went out of my way the last
9 time to hold a hearing to make sure that he understood what was
10 going on, and he said he wanted you. You were his attorney.
11 You were the attorney of choice.

12 Again, Ms. Gambino, I have a responsibility to numerous
13 people. I have hundreds of cases, and I have to give them
14 attention. If every attorney practiced the way you've been
15 practicing on this case, I wouldn't be able to do anything in
16 my court. And I think I have been more than fair with you by
17 continuing this matter and telling you you've got to get ready
18 and you've got to be ready to proceed.

19 This case needs closure, and Mr. Tanner has a right to
20 appeal his conviction and/or sentence in this case, and he has
21 a right to get to the Court of Appeals and/or the Supreme Court
22 if it goes that far. And so far this hasn't been done in this
23 case. And I don't take it lightly, Ms. Gambino, because,
24 again, I understand that there might be other motions, but I
25 can't let the attorneys continue to disregard and be

1 disrespectful to this Court or to their clients.

2 MS. GAMBINO: Your Honor, it's not my intention to be

3 disrespectful to anybody.

4 THE COURT: Well, Ms. Gambino, I know that numerous
5 times you were not prepared. You came in at the 11th hour
6 and say, I need a continuance. I'm not ready to go.

7 Now, I only practiced for 22 years, Ms. Gambino, but I
8 never did that to a Court; and if I did it, I expected full
9 well that the Court would send me out on my tail with that, you
10 know, type of actions by an attorney. So I never even thought
11 about doing that. This case you've done it over and over and
12 over again. The one time that you called and you said you had
13 a bad cold, you didn't say I want to change the issues. I'm
14 not prepared. I haven't read.

15 You said, and I'm paraphrasing, I'm on my deathbed because
16 you did have a bad cold, I believe, or at least your voice
17 sounded like that.

18 MS. GAMBINO: I was very ill at that time, Your
19 Honor.

20 THE COURT: And I took it to be that way, and I gave
21 you the continuances. And I know one of my colleagues in this
22 building also had a case with you, and he had expressed
23 disappointment to me also with regards to your being ready and
24 being on time, and I think he gave you a very short continuance
25 on that case.

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1 I'll go ahead and continue it, but I am not going to allow
2 this memorandum to control this case. I have spent numerous
3 hours on this case, and I am willing to look at your memorandum
4 as to why I have to allow this accordion to open up again. But
5 I am also going to set this matter down for a Rule to Show
6 Cause as soon as this case is over with, or your representation
7 of this case is over with if we get to that point because I

8 probably have expended thousands of dollars in hours preparing
9 for this case because I don't take it lightly either. This man
10 has a right to have a judge that hopefully is fully informed in
11 this case. So every time it comes up for sentencing, I'm
12 reviewing the case. I'm going back through my notes because
13 obviously with time, you start to forget some of the facts and
14 what occurred. So I go through all of that. Then you come in
15 the day of sentencing and say, I need a continuance again.

16 So if you want that, I'll give you that. I'll let you
17 give me a memorandum on that; otherwise, we'll go through
18 today's sentencing as is, and I'll let you talk to your client.

19 Ms. Gambino, in fairness to both of you, if you want to
20 talk privately to him, I can put you in the holding cell. That
21 way you guys can talk privately.

22 MS. GAMBINO: I would appreciate that, Your Honor.

23 THE COURT: Pardon?

24 MS. GAMBINO: I would appreciate that, Your Honor.

25 THE COURT: Can you put Mr. Tanner in the holding

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1 cell?

2 Ms. Gambino, because I do not want to rush you, and I
3 know, Mr. Nozick, you have another problem, and I'll try to go
4 through that as expeditiously as I can. I am going to go back
5 to chambers. That way I'm not out here putting any rush on
6 you. Okay?

7 MS. GAMBINO: Okay. Thank you.

8 (Break.)

9 THE COURT: Now, Ms. Gambino, have you had an
10 opportunity to confer with your client?

11 MS. GAMBINO: Yes, I have.

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12 THE COURT: What are you asking the Court?

13 MS. GAMBINO: Time to file that motion that you
14 outlined.

15 THE COURT: Well, I'm not sure what motion you're
16 talking about, Ms. Gambino. That's why I want it outlined
17 specifically as to what you want me to do, and I can tell you
18 specifically what I will do. I have concerns because I'm not
19 going to want to continue this case.

20 Now, you said that you were having some physical and
21 mental problems. What I might do, only because if there is
22 that problem, to find out where you want to go.

23 Is that going to be a reason for you to withdraw from this
24 case? And if you don't withdraw, and you want to continue on,
25 can you do it? And if you continue on, why shouldn't you be

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1 bound, and your client, by all of the actions that you've had
2 up until now?

3 MS. GAMBINO: I'm happy to respond to all of those
4 questions, Your Honor.

5 THE COURT: That's your client's wish?

6 MS. GAMBINO: As I understand it, yes, if you would
7 like to ask him directly.

8 THE COURT: Mr. Nozick, what's your position?

9 MR. NOZICK: Your Honor, I will defer to the Court.
10 We are ready for sentencing today. We'll be ready for
11 sentencing on a date set by the Court.

12 THE COURT: Mr. Tanner, please face this young lady;
13 raise your right hand to be sworn.

14 CHARLES TANNER, DEFENDANT, SWORN

15 EXAMINATION

16 BY THE COURT :

17 Q. Mr. Tanner, why don't you bring that microphone close to
18 you. I want to be able to hear you. Okay? Speak up. You're
19 not going to get me upset by speaking up. If I don't hear you,
20 then I'm guessing as to what you're saying.

21 Please state your full name.

22 A. Charles L. Tanner.

23 Q. And, Mr. Tanner, are you the same defendant that is a
24 defendant in Cause Number 2:04-CR-80?

25 A. Yes, sir.

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1 Q. Mr. Tanner, you were tried in this court back in November
2 of the year 2006; is that correct?

3 A. Yes, sir.

4 Q. And the jury found you guilty at that time?

5 A. Yes, sir.

6 Q. You had a different attorney at that point. I believe his
7 name was Mr. Bopiac. I can't think of his first name right
8 now. Is that correct?

9 A. Yeah.

10 Q. Okay. Afterwards you discharged him and hired another
11 attorney; is that correct?

12 A. Yes, sir.

13 Q. And her name is Andrea Gambino?

14 A. Yes.

15 Q. And she is alongside you?

16 A. Yes, sir.

17 Q. This case has been continued numerous times; is that
18 correct?

19 A. Yes.

20 Q. And I have advised you and everybody on several occasions

21 that the last continuance would be the last continuance. It
22 will not be continued any further?

23 A. Yes.

24 Q. And the last time that we were here, I think somebody said
25 it was February?

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1 A. February 14th.

2 Q. February 14th. I asked you whether you were still
3 satisfied with the counsel, representation, and advice given to
4 you in this case by Ms. Gambino?

5 A. Yes.

6 Q. And whether you were agreeable to a continuance?

7 A. Yes, I was agreeable with a continuance.

8 Q. Okay. And I think at that hearing I also said that --

9 A. The next time you ain't going to be so lenient on me.

10 Q. Pardon?

11 A. The next time you wouldn't be lenient on me if I had
12 problems later.

13 Q. You were going to be stuck with your actions because
14 that's who you wanted as an attorney.

15 A. Right.

16 Q. Ms. Gambino is asking for a continuance again today.

17 A. Yes.

18 Q. You understand that.

19 And I have advised everyone before that this case was
20 scheduled for sentencing, and I was intending to go forward
21 with it.

22 Now, Ms. Gambino has argued in the alternative, and I'm
23 really confused with that because, one, she wants to get out
24 because of -- she wants a continuance in this matter, and she's
25 also arguing that you should not be bound by her actions, and

1 she doesn't want to see you suffer.
2 Ms. Gambino, I'm trying of paraphrase what you said.
3 She doesn't want to see you suffer because of her actions.
4 A. Yes.
5 Q. I'm not sure, one, whether I will let her out or not let
6 her out; two, I'm not sure that if I do let her out, that
7 you're still not bound by her actions or subsequent counsel
8 would be bound by her actions, and; three, whether there's a
9 reason to grant a continuance or to allow her to get out. Do
10 you understand that?
11 A. Do I understand that?
12 Q. Yes. I'm not saying you agree with it. I'm just saying
13 do you understand that's what I have advised?
14 A. Yeah, I understand that.
15 Q. I have several questions of you.
16 Do you still want Ms. Gambino as your attorney?
17 A. I need to say something. Could I say something?
18 Q. Well, I'm in a little bit of a Catch 22, Mr. Tanner. I'll
19 let you say whatever you want to say, but I suggest you first
20 talk to her regarding, you know, your rights. I don't want you
21 to say something that might come back to haunt you later. I'm
22 just doing that out of caution.
23 You want to talk to your attorney for a second as to where
24 you want to go? I just don't want you to say something that
25 may hurt you later.

1 A. Okay. I'll run that by her first. It'll be real quick.
2 Q. Push that button down because I'm going to hear you

3 otherwise.

4 (Off the record.)

5 BY THE COURT :

6 Q. You talked to your attorney; is that correct?

7 A. Yes, sir.

8 Q. Now do you want to say something?

9 A. My thing is with the continuance part. When we talked on
10 the 14th, my thoughts was based upon her doing the best for
11 me in this situation. I don't want to go into my previous
12 lawyer, but some things that occurred in trial that happened
13 with him, I was told to put my trust into my attorney. I had
14 the right to hire one. I trusted him. And, I mean, you was at
15 the trial with me. But to make a long story short --

16 Q. Mr. Tanner, I can't go into that right now. We're only
17 here right now for purposes of sentencing.

18 A. But basically what I'm saying was for her to --

19 Q. I assume your client may have a complaint on appeal based
20 upon the actions of your previous attorney, or you may have a
21 request for a new trial based on his actions.

22 A. Right.

23 Q. That is not something that I'm going to take up at the
24 sentencing.

25 A. Right. But my thing with saying was I wanted her to have

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1 time to do my sentence memorandum or whatever motion she had to
2 do. And if it took for me to be sitting for things to get done
3 right, I would rather for her do it right and we handle this
4 now than not even have to go to appeal.

5 Q. Mr. Tanner, so that you understand it, I can't guarantee
6 what your attorney will or will not do. I am not privy to your
7 agreements or to what's going on.

8 A. Right.

9 Q. I give deadlines under which I expect this case to move.
10 I advised the attorneys. I advise you as to where I'm going to
11 be going.

12 Now, whether she does something or doesn't do something
13 because of concurrence with you or because her judgment, those
14 that are all different issues. I can't go into that.

15 A. Okay.

16 Q. I do know that when we were here before, no mention was
17 made of bringing different issues up. No mention was made of
18 wanting to file a different memorandum. Everybody was advised
19 when you were found guilty to get together with probation, to
20 meet with them regarding the objections, for everybody to give
21 their side regarding the issues on the objections to see if you
22 can work them out; if not, you put them in writing. If you
23 looked at the presentence report, you'll see where the
24 objection is made, and I think all of them are from the
25 defendant. You'll see the defendant's position, you'll see the

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1 Government's position, and you see the probation officer's
2 position.

3 When I get ready for sentencing, those are the only issues
4 that I'm going to be using for sentencing. Okay? Now, that
5 doesn't mean it's set in stone, but there has to be awfully
6 good reason for it; otherwise, Mr. Tanner, I cannot keep, you
7 know, changing the ball because I would never be able to
8 dispose of a case.

9 A. I understand.

10 Q. Now, again, you may -- this is something that your
11 attorney can advise you of -- have other rights, time for a

12 motion for a new trial or on appeal if you do go to the Seventh
13 Circuit. Absolutely your rights.

14 But I do intend to move this case along. This has been
15 one of my slowest cases. You were convicted in the year 2006.
16 We're in the year 2008, Mr. Tanner.

17 A. Right.

18 Q. And there's reason to go forward with that.

19 Now I'm caught in the dilemma with two different forces.
20 One, you have a right to counsel of your choice unless some
21 certain circumstances occur, but under most cases you're
22 entitled to that. And I respect that, and I'm not trying to
23 take your attorney away from you. But you're also bound by the
24 actions of an attorney that you use unless Ms. Gambino gives me
25 some law to the contrary with regards to that.

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1 So what I'm trying to tell you, even if I give a
2 continuance, it's going to be very limited, and there's no
3 guarantee that you're not going to still be bound by the very
4 same issues that are there because I am not going to give an
5 accordion effect, and I will not be prone to listen to counsel
6 saying, well, this case has been continued. Now there's no
7 harm, no foul. We have additional time.

8 That's not going to happen. There was a date that was
9 bound, and we're not going to have motions coming in 15 minutes
10 before a hearing in which time I won't have time to review a
11 record or review case law.

12 Mr. Tanner, I have too much respect for you to go out
13 there and give a knee-jerk reaction on something.

14 I have to review. When people say that the record said
15 something, it's entirely possible that it does say whatever
16 people say, but I look at it. I even look at my own

17 recollection of what the record is because sometimes we see
18 things in our own mind we believe that certain things were
19 said. So I go out, as I did today, and I get a transcript of
20 what was said. So that's the reason why I'm asking you, you
21 know, do you want to continue with Ms. Gambino? That doesn't
22 mean, you know, if she files a motion to withdraw or where it's
23 going. I have to know what you want.
24 A. Yes. I want to continue with her to being my attorney.
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1 Q. And are you making this decision knowingly and
2 voluntarily?
3 A. Yes, sir.
4 Q. Do you have any questions about it?
5 A. I got a lot of questions, but I guess it's going off of
6 what --
7 Q. Pardon?
8 A. I got a lot of questions.
9 Q. Well, Mr. Tanner, I can ask you to ask her right now. I'm
10 not going to be prone to listen to -- you know, if you're
11 sentenced to more than what you expect, you can't come back up
12 later and say, well, now I have new objections.
13 A. Right.
14 Q. Understand, you know, we don't do it that way. It's like
15 playing poker. You can't wait until your hand is lost and say,
16 Now I want to have a new deck. I want to have a re-dealing of
17 the cards.
18 A. Right.
19 Q. Do you have any questions you want to bring to the Court?
20 A. Let me ask her something.

21 (Off the record.)
 22 A. I'm going to keep my -- I ain't got no questions.
 23 Q. I'm sorry. You want to keep her?
 24 A. Yeah. I want to keep her as my attorney, and I don't have
 25 no questions.

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1 Q. And you understand that this Court may find that her
 2 request for a continuance was not well-founded, and her request
 3 to expand or change the issues are not well-founded. Do you
 4 understand that?
 5 A. Yeah.
 6 Q. And I may not allow her to do that. Do you understand
 7 that?
 8 You have to answer out loud, Mr. Tanner.
 9 A. Yes.
 10 Q. I'm not trying to poke fun of people, but when you get
 11 quiet, I have no answer on the record.
 12 Ms. Gambino, assuming for a moment that I do grant the
 13 continuance, how long do you need to give me a memorandum with
 14 regards to the issues in this case as to why you should
 15 continue representing the defendant after having said that you
 16 have had some mental problems and physical problems and why you
 17 should not be bound by the issues that are here and why the
 18 record should be allowed to be changed, and that does not cover
 19 the issue of sanctions.
 20 I told you, I'm reserving the right to do that, but I'm
 21 going to wait for this case to be done before I make any
 22 decisions on that.
 23 Are you agreeable to that?
 24 MS. GAMBINO: Yes.
 25 THE COURT: Okay.

1 MS. GAMBINO: I can have that done in two weeks, Your
2 Honor.

3 THE COURT: Mr. Nozick?

4 MR. NOZICK: Ten days to respond.

5 THE COURT: I can't count ten days in two weeks. So,
6 Ms. Gambino, why don't I give you two weeks from today, which
7 is --

8 THE CLERK: April 17th.

9 THE COURT: And two weeks after that, Mr. Nozick,
10 only because I don't want to start, you know, with half-weeks.
11 May 1st?

12 MR. NOZICK: Yes, Your Honor. Thank you.

13 THE COURT: Are there any other issues, Counsel, that
14 you can think of right now that are necessary? I don't want to
15 keep expanding it, but I would rather get them all now on the
16 table.

17 MS. GAMBINO: Well, I want to be clear since I --

18 THE COURT: Ms. Gambino, you have a very soft voice.
19 Mr. Tanner has a soft voice, but yours is even softer than his.

20 MS. GAMBINO: I would like to be clear about the
21 Court's position with respect to the 3553(a) factors, and if
22 those things need to be done in writing in advance, if
23 witnesses need to be noticed up in advance, I want to be clear
24 on what can be done on the day or how you deal with those.

25 THE COURT: Ms. Gambino, if I order this case set for

1 sentencing, if you're going to have character witnesses, I
2 would expect you to have them here on that date.

3 Again, I was somewhat disturbed today because you told me
4 that you needed character witnesses today, and after several
5 prompting from the Court, you finally said you didn't have them
6 here, or didn't have all of them here.

7 It's your obligation as an officer of this Court to have
8 all your witnesses present and ready to proceed.

9 This case was not continued, and really my better judgment
10 says not to continue it because I have a feeling the same
11 issues we have are still going to be there even after whatever
12 occurs, but you would have to have your witnesses, or, excuse
13 me. I have that cold that's going around. If you and the
14 Government can agree to a proffer, sometimes you can avoid
15 having the witness here under that circumstance; but I will
16 tell you, if it's going to depend on credibility, I can't give
17 you credibility on proffer because I can't see the witness.

18 MS. GAMBINO: Right. Absolutely. What I'm more
19 concerned about is whether you want the 3553(a) arguments in
20 writing or not.

21 THE COURT: You don't have to have them in writing.
22 If you want me to consider them -- if you think you have very
23 strong 3553(a) arguments, and if you want to give them to me,
24 Ms. Gambino, I welcome them. But in fairness to myself and in
25 fairness to the opposing attorney, don't give them to me 15

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1 minutes before a hearing. I read fast but I'm not that fast of
2 a reader. And when you give me transcript pages, I don't know
3 that the transcript has been prepared. I assume that it has.
4 But for me to go out and find the transcript and read, read
5 right before it and read right after it to see if it was taken
6 out of context would certainly take me probably a day with the
7 citations that you gave me. I know I couldn't do them in 15

8 minutes. And then if you gave me a citation to a case,
9 depending on who wrote it, if it's a Supreme Court case, that
10 might take me several hours to read because some of them, as
11 you well know, 40, 50, 60 pages in length. So if you're going
12 to do that, do it with sufficient time so that the Government
13 can get a copy of it, and they may want to respond to some
14 things or file their own memorandum. You don't have to file.
15 If you want to do it at the time of sentencing, you can argue
16 the 3553(a) issues. Obviously if you want to make a bigger
17 impact on my mind only because I can digest them better, you
18 can give them to me in writing. You don't have to do that.

19 MS. GAMBINO: Would you like those on the 17th
20 along with this other memorandum?

21 THE COURT: You don't have to give them to me on the
22 17th. The only thing I don't know is if I deny your motion,
23 I'm not sure how much time I'm going to give you after that.

24 I'm getting ready for I think at least two cases that are
25 four weeks in length, and then there's another case right after

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1 that. So I can think of three cases right now that are set
2 that are going to be lengthy. And, Ms. Gambino, although my
3 heart is in the right spot, sometimes I can't do two things at
4 one time. If I'm in trial, that's the most important thing
5 because you have to constantly be alert for all the issues.

6 I can't tell you how long it will be after I make a ruling
7 on the motion. But, again, Ms. Gambino, I want you to
8 understand that a continuance does not open the issues up.

9 MS. GAMBINO: I understand that.

10 THE COURT: And I still need some law from you and
11 argument from you that you say is there that Mr. Tanner is not

12 responsible by what you've done in a case.

13 You can't think of anything else?

14 MS. GAMBINO: That's all I have, Your Honor.

15 THE COURT: Mr. Tanner, can you think of anything
16 else you want to address the Court about or ask the Court
17 about?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Are you satisfied with the record that I
20 made with regard it was knowingly and voluntarily made?

21 MR. NOZICK: I am, Your Honor. Thank you.

22 THE COURT: Is there anything else you can think of?

23 MR. NOZICK: I have nothing to add.

24 THE COURT: Counsel, I'll await your memorandums on
25 this matter on or before the days set.

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1 MS. GAMBINO: Thank you.

2 Your Honor, excuse me. I'm sorry. Mr. Tanner has asked
3 if the Court would grant him permission to hug his Godmother.

4 THE COURT: Mr. Tanner, I am not trying to be
5 disrespectful. Believe me, I understand, you know, the
6 importance of our relatives. Those are all issues that deal
7 with security, and I yield completely to the marshal service.
8 They may have regulations on that, and I can't break away from
9 those regulations because, and I'm not saying you're going to
10 do anything crazy, but if somebody ever does, they're going to
11 say, Judge, it's because you don't allow us to conduct
12 security. So I have to yield to whatever the marshals have on
13 a case. And, again, I'm saying that respectfully. I'm not
14 trying to be smart about it. Okay?

15 (Hearing concluded.)

16

17 CERTIFICATE OF REPORTER

18 I, RICHARD D. EHRLICH, a Registered Merit Reporter and
19 Certified Realtime Reporter, certify that the foregoing is a
20 true, complete, and accurate transcript of the proceedings
21 ordered to be transcribed in the above-entitled case before the
22 Honorable Rudy Lozano, in Hammond, Indiana on April 3, 2008

23 _____
24 Richard D. Ehrlich, Official Reporter Date

25

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